Filed 4/24/19 Wheeler v. MedImpact Holdings CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DAVID G. WHEELER, Plaintiff and Respondent, v. MEDIMPACT HOLDINGS, INC. et al., Defendants and Appellants.	D073514 (Super. Ct. No. 37-2017-00032645-CU-BC-CTL)

APPEAL from an order of the Superior Court of San Diego County, Joan M. Lewis, Judge. Reversed.

Sherman & Howard, Peter G. Koclanes, Katherine D. Varholak, Melissa K. Reagan; Allen Matkins Leck Gamble Mallory & Natsis, Amy Wintersheimer Findley and Matthew J. Marino for Defendants and Appellants.

Kirby & Kirby, Michael L. Kirby and Jason M. Kirby for Plaintiff and Respondent.

Plaintiff signed an employment agreement with his employer. The agreement contained an arbitration clause. After he was terminated, plaintiff brought an arbitration action against his employer. He also filed a superior court complaint against related parties who had not signed the employment agreement. These defendants moved to compel arbitration. The court entered an order denying the motion because defendants were not parties to the agreement.

We reverse the order. Plaintiff's claims against the nonsignatory defendants are subject to arbitration because the claims arose from, and are inextricably intertwined with, the employment contract containing the arbitration clause.

OVERVIEW

David Wheeler was an employee and a managing officer of MedImpact Health Care Systems, Inc. (Employer) for more than 15 years. His employment contract contained an arbitration provision. After his termination in December 2015, Wheeler served an arbitration claim on Employer, asserting he was wrongfully terminated for raising issues about alleged wrongdoing by Frederick Howe, Employer's founder, chief executive officer (CEO), and majority shareholder.

Wheeler also brought a separate action (the action before us in this appeal) in San Diego County Superior Court against: (1) Howe (individually and as trustee of a family trust); (2) Employer's parent company (MedImpact Holdings, Inc. (Holding Company)); and (3) a separate entity alleged to be Howe's alter ego (FH Equity Holdings, LLC (FH

Equity)).[1] Wheeler alleged that after Employer terminated him, these defendants ("nonsignatory defendants") wrongfully: (1) removed him as a shareholder of Holding Company by compelling a repurchase of his stock in violation of promises made to him during his employment; (2) set the stock purchase price below its fair market value; and (3) withheld and/or placed into escrow substantial portions of the stock repurchase funds.

The nonsignatory defendants filed a cross-complaint pertaining to alleged wrongdoing by Wheeler in his role as an accountant, and also filed a separate arbitration proceeding with similar claims to those alleged in the cross-complaint.

The nonsignatory defendants then brought a motion to compel arbitration of Wheeler's superior court complaint based on the arbitration provision in Wheeler's employment agreement and an arbitration provision in certain accountant engagement letters. After briefing and a hearing, the court denied the motion, finding that the nonsignatory defendants were not parties to the employment agreement or the accountant engagement letters, and there was no applicable exception to the general rule that only a signatory party to a contract can enforce a contractual arbitration clause.

The nonsignatory defendants appeal. We conclude the equitable estoppel exception to the signatory requirement applies and thus the court erred in denying defendants' motion to compel arbitration. We thus do not reach the merits of the other exceptions proffered by defendants on appeal and in the proceedings below.

---

1 For purposes of this appeal, there is no material distinction between Howe and FH Equity. We therefore sometimes refer to both parties as "Howe."

FACTUAL AND PROCEDURAL BACKGROUND

Allegations in Wheeler's Superior Court Complaint

Howe is the founder and CEO of Employer, a privately-held pharmaceutical benefit management corporation. At all relevant times, Howe owned approximately 90 percent of Employer's shares and had "total control of the company." In 2016, Employer was valued at more than $2.75 billion.

The relationship between Wheeler and Howe began during the 1980's, when Wheeler's independent accounting firm performed accounting services for Howe and his businesses. Between 1989 and 1999, Employer grew from having no value to a value of more than $50 million. During that decade Wheeler substantially assisted Howe with Employer's business.

In 2002, Howe hired Wheeler as Employer's chief financial officer (CFO). In 2003, Wheeler signed an employment agreement with Employer (Employment Agreement). The agreement contained an arbitration clause, which will be detailed below. The Employment Agreement described Wheeler's compensation terms, including an annual $275,000 salary and Wheeler's "entitle[ment] to participate in the Company's Employee Incentive Stock Option Plan ('Option Plan')." The agreement required Wheeler to devote his full business energies and time to Employer, and refrain from engaging in any act that injured specified interests of the Employer or its "affiliates." "Affiliates" was defined to mean "(a) any Company subsidiary, and (b) any entity directly or indirectly controlled or beneficially owned in whole or substantial party by [Employer]

or any [Employer] subsidiary or related entity." The Employment Agreement was signed by Wheeler and one of Employer's vice-presidents.

During the next 12 years, Wheeler and two other senior employees performed the responsibilities of a CEO, while Howe pursued hobbies and other activities unrelated to the business. Throughout this time, "Howe and Wheeler discussed that Wheeler's stated compensation and benefits . . . did not accurately reflect his substantial contributions to [Employer's] success." But Howe repeatedly told him that Howe's wealth was tied up in Employer's assets and assured Wheeler that both men would receive full compensation upon the occurrence of a "liquidity event," defined to mean "a sale of the company or taking the company public." During that same period, Howe made numerous loans to Wheeler, totaling about $12 million. The loans were reflected in written promissory notes, and Howe was the promisee on the notes. It was understood by Employer, Howe, and Wheeler that the notes would not become due until a "major liquidity event."

According to the complaint, "The driving force in keeping Wheeler involved in [Employer] was Howe's promises and agreement to let Wheeler participate in the ownership of the company so that they would both substantially profit when Howe ultimately decided to sell the company, take it public or some other liquidity event occurred. Howe and Wheeler discussed that [Employer] would create a stock option plan so that Wheeler could begin sharing in the upside of ownership that Howe had usurped for himself. [¶] . . . Howe . . . provided repeated assurances to Wheeler that eventually he would sell [Employer] or take it public and that they both would reap the enormous benefits of their labor when the liquidity event finally occurred. In the meantime, Howe

said he would be there for Wheeler and Wheeler need not worry about money because Howe's success was Wheeler's success. For several reasons, including tax planning, Howe preferred to personally loan money to Wheeler when and if he needed it, rather than having [Employer] pay Wheeler higher compensation."

During the same period, Howe borrowed approximately $285 million from Employer. Howe borrowed this money because Employer was a private close corporation, and, as the majority owner, he elected to take the substantial loans to realize the financial benefit of the value being created by Employer. In 2008 and 2010, Employer issued dividends to its shareholders to offset the "hundreds of millions of dollars that Howe borrowed."

In 2010, Howe created Holding Company, and Employer became its wholly-owned subsidiary. Howe was Holding Company's majority shareholder, and Employer's shareholders (including Wheeler) became minority shareholders of Holding Company. Wheeler's shares in Employer's stock were converted to Holding Company shares. After the creation of Holding Company, Howe continued to treat the business as his "personal piggy bank."

During the next several years, Howe went through highly contentious dissolution proceedings with his wife, and he told Wheeler that after these proceedings were completed, he would be issuing additional dividends to Holding Company minority shareholders. In the dissolution proceedings, Howe acknowledged Wheeler's substantial role in creating Employer's business success. Wheeler testified on Howe's behalf and the

court found him credible pertaining to various disputed business issues related to the dissolution.

After the dissolution was final, Wheeler and the other officers began "pushing Howe to make [Holding Company] issue a special dividend to the minority shareholders of approximately $20 million," to compensate them for Howe's borrowing millions of dollars at a low interest rate from the company. When Howe learned of Wheeler's activities in advocating for a $20 million dividend, in December 2015, he fired Wheeler and another executive officer. Howe made the termination decision "with no consultation or input from the Board of Directors or the company's Human Relations department."

Employer's termination letter (signed by Howe) stated Howe had "lost confidence" in Wheeler's ability to do the job, and told Wheeler he must repay "all loans" with interest. The termination letter stated: "[Y]ou entered into various loan transactions with [Employer], the Howe Family Trust, FH Equity . . . . These loans have matured and are currently past-due to the respective creditors. Please make arrangements to promptly fulfill your repayment obligations." Howe made this request despite knowing that the "demand was contrary to everything he and Wheeler had discussed and agreed to hundreds of times before."

When his employment ended, Wheeler held 656,598 shares of Holding Company stock. About nine months later, on September 16, 2016, Holding Company sent Wheeler a letter notifying him it would be purchasing all the shares of all stockholders who left Employer's employment within the past 12 months. In the letter, Holding Company said it determined the fair market value of each of Wheeler's stock shares was $24.10, for an

aggregate price of $15,824,011.80. Holding Company said it would "offset[]" this amount "by $7,997,758.80, the amount owed by you (in principal and accrued interest . . .)" under one of Wheeler's promissory notes (a $5 million note). Holding Company said it would also place an additional $4,869,282.95 of the purchase price "in escrow" based on the remaining notes that had been secured, in part, by the stock shares. The letter attached a $2,956,970.05 check, reflecting the "remaining portion of the purchase price" for Wheeler's stock shares.

In a second letter to Wheeler, Employer and Howe's attorney reiterated that Wheeler currently owes Howe *and* Employer, and several other related entities $12,867,041.75 based on the loans made during Wheeler's employment, and demanded repayment.

About eight months later, in May 2017, Wheeler sent to Employer a Written Statement of Claim under the dispute resolution provisions of the Employment Agreement. In the claim, Wheeler alleged his termination was wrongful because he was terminated in retaliation for complaining about and exposing Howe's alleged breach of fiduciary duty and other alleged misconduct.

About four months later, on September 5, 2017, Wheeler filed a lengthy superior court complaint against the nonsignatory defendants (Holding Company, Howe, and the two entities allegedly owned/controlled by Howe (Howe's family trust and FH Equity)). Wheeler detailed the facts summarized above and alleged numerous causes of action, including breach of fiduciary duty, constructive fraud, conversion, breach of oral

contract, breach of the implied covenant of good faith and fair dealing, promissory fraud, breach of written contract pertaining to the stock agreements, and slander.

In his breach of fiduciary duty and constructive fraud causes of action, Wheeler alleged that Howe (as majority shareholder) and Holding Company (as stock agreement administrator) breached their fiduciary duties by: (1) setting a below fair market value for Wheeler's Holding Company stock; (2) favoring Holding Company's majority shareholder (Howe) over Wheeler and the other minority shareholders; (3) using Holding Company's repurchase rights solely to benefit Howe, cause detriment to Wheeler's interests, and violate "the known agreements" between Howe and Wheeler; (4) employing the repurchase rights to avoid the special dividends due to the minority shareholders from 2010 until Wheeler's termination; and (5) "acting to wrongfully deprive Wheeler of the financial benefits of a major liquidity event for [Holding Company]."

In the conversion cause of action, Wheeler alleged Howe and Holding Company wrongfully withheld and/or placed in escrow portions of the purchase price for Wheeler's Holding Company stock.

In his claims for breach of oral contract and breach of the implied covenant of fair dealing against Howe, Wheeler alleged that "starting in 2002 Wheeler and Howe had an ongoing oral agreement . . . that the loans made by Howe to Wheeler would not be due until and unless a substantial [Employer] liquidity event occurred for both of them. Wheeler and Howe further agreed that they would equitably 'work it out' and settle up with each other to *resolve past compensation issues* and other milestone events when the

liquidity happened for both of them. [¶] . . . [¶] . . . Howe breached the oral agreements on December 7, 2015 by demanding that Wheeler immediately pay back all sums borrowed upon the termination of his employment with [Employer] when no liquidity event had occurred. Howe further breached the oral contract by taking the position that a liquidity event included [Holding Company] exercising repurchase rights common to all employees and when no true liquidity event had occurred for both Howe and Wheeler. Finally, Howe breached the oral contract by actually taking those monies due to Wheeler from [Holding Company] so Howe could repay himself sums that were not yet due and to pay himself amounts that had never been agreed upon between Howe and Wheeler." (Italics added.)

On his claims for breach of contract and breach of the implied covenant of fair dealing against Holding Company, Wheeler alleged "Wheeler and [Holding Company] (and its predecessor) entered into written agreements regarding stock grants and options awarded to Wheeler and exercised by him. Those written agreements required [Holding Company] to repurchase Wheeler's shares with cash, cash equivalents, or forgiveness of debt owned by Wheeler to [Holding Company]. [¶] . . . [Holding Company] breached those contracts by failing to deliver cash or cash equivalents to Wheeler to repurchase his stock. [Holding Company] also breached its agreements with Wheeler by failing to pay him fair market value of his shares in the repurchase transaction." Wheeler alleged that "[o]ne of the primary intended benefits and protections for Wheeler under those written contracts were that [Holding Company] would not cause that right of repurchase to be exercised so as to benefit the majority shareholder, Howe, and thus deny Wheeler the

opportunity to receive the full financial benefits of a liquidity event and a legitimate repurchase price."

On his promissory fraud cause of action against Howe, Wheeler alleged that Howe intentionally made false promises to Wheeler in the context of the employment relationship; Howe intended that Wheeler would rely on the promises; Wheeler did rely on the promises; and Wheeler did not discover the falsity of the representations until he was terminated in December 2015.

On his slander claim against Howe, Wheeler alleged that after Howe terminated him, he made knowing false and defamatory statements to Wheeler's former coworkers that " 'Dave Wheeler is a crook' and 'Dave Wheeler stole money from me.' "

Wheeler attached to his complaint: (1) a copy of the Employment Agreement between Employer and Wheeler; (2) the final October 2015 statement of decision in Howe's dissolution matter ; (3) the December 7, 2015 termination letter from Employer to Wheeler; and (4) the September 2016 letters from Holding Company regarding its decision to repurchase Wheeler's shares of Holding Company stock.

Wheeler's Arbitration Written Statement of Claim

Wheeler also filed a separate arbitration action with Judicial Arbitration and Mediation Services, Inc. (JAMS) against Employer, asserting three causes of action: (1) wrongful termination in violation of public policy; (2) breach of employment agreement by failing to provide severance benefits; and (3) breach of an implied agreement to continue health insurance coverage for one year after termination.

The Written Statement of Claim contained many of the same alleged facts as those contained in Wheeler's superior court complaint, including the history of the relationship between Howe and Wheeler; the fact that by about 2009, Wheeler and other officers were primarily responsible for managing the company and had been the main factors behind the company's success; Howe's protracted divorce proceedings; the creation of Holding Company and Wheeler's status as a minority shareholder of Holding Company; the fact that Howe treated Employer's business "like his personal piggy bank" and had obtained low-interest loans of about $285 million from Holding Company and/or Employer. Wheeler also included additional details regarding Howe's borrowing from Holding Company and his refusal to permit a special dividend to properly compensate the employees; Wheeler's attempts to inform Howe that his actions in refusing to permit a special dividend constituted a breach of his fiduciary duties; and Howe's decision to terminate him allegedly in retaliation for these complaints.

Motion to Compel Arbitration

The nonsignatory defendants then moved to compel arbitration of Wheeler's claims asserted against them in the superior court complaint. They relied on the lengthy arbitration provision in the Employment Agreement. The first paragraph states:

> "Dispute Resolution/Arbitration. All disputes, controversies, or claims between Employee and [Employer] arising out of or relating to his employment and/or this agreement, including, but not limited to the construction or application of its terms, the termination of his employment with [Employer], and any claim of discrimination under any state or federal statute or common law, shall be resolved by binding arbitration conducted in accordance with either the American Arbitration Association (AAA) or Judicial Arbitration and Mediation Services, Inc. (JAMS) . . . . As Employee is an executive

> of [Employer] and had the opportunity to seek advice of counsel and to negotiate the provisions of this Agreement, arbitration under this Agreement shall not be considered 'Consumer Arbitration' for any purpose under California law."

The next several paragraphs (1) identify the required steps if a party seeks to resolve a dispute through arbitration and state that "no dispute shall be submitted to arbitration where the parties have not complied" with these steps; (2) set forth rules regarding which party bears the costs for the arbitration; and (3) provide that "the dispute shall be resolved by binding arbitration pursuant to the California Code of Civil Procedure, including Section 1283.05 allowing discovery."

Nonsignatory defendants argued that Wheeler's claims are subject to arbitration under this arbitration provision because his claims arose out of, or were related to, Wheeler's employment or the Employment Agreement. These defendants maintained that the issue of the *scope* of the arbitration clause is a matter for the arbitrator's determination based on the agreement's reference to AAA rules, which delegate scope issues to the arbitrator. They also argued that their nonsignatory status did not preclude arbitration based on theories of agency, third party beneficiary, and equitable estoppel.[2]

In opposing the motion, Wheeler argued primarily that he could not be compelled to arbitrate with defendants because they were not parties to the Employment Agreement.

---

2 Nonsignatory defendants also relied on an engagement letter from Wheeler's former accounting firm to Catfish Ventures, LLC, describing the terms of tax preparation services for 2009 income tax returns. The letter contains an arbitration clause. Because we find this document (and other accounting engagement letters) to be factually inapplicable and have minimal relevance to the issues before us, we do not discuss them further in this opinion.

He argued that under settled legal principles, none of the defendants were Employer's agents for purposes of the arbitration agreement. Wheeler also asserted that the equitable estoppel doctrine did not apply because "none of [his] causes of action against [the nonsignatory defendants] are based on the substantive terms of the Employment Agreement," and instead they are based solely on the Holding Company's "Amended and Restated 2010 Incentive [Stock] Plan" (2010 Stock Plan). Wheeler also maintained that the nonsignatory defendants waived their rights to compel arbitration because they had failed to comply with the Employment Agreement's prefiling conditions.

In support of his arguments, Wheeler filed his declaration stating that Employer required him to sign the Employment Agreement without any opportunity for "a negotiation over the words or terms." He also detailed facts supporting the claims asserted in his superior court complaint pertaining to the alleged wrongdoing of Holding Company and Howe.

Wheeler additionally attached a copy of Holding Company's 2010 Stock Plan in effect when he was terminated, and the promissory notes in which he agreed to repay amounts (with interest) borrowed from Howe and/or Howe's trust. The promissory notes were signed by Wheeler in 2002, 2003, 2005, 2006, 2008, and 2011. Neither the 2010 Stock Plan nor any of the promissory notes contained an arbitration clause.

Wheeler also submitted his counsel's declaration describing his prelitigation efforts to notify opposing counsel of Wheeler's claims, and stating that nonsignatory defendants had never furnished Wheeler with a description of their claims, including any defenses and supporting witnesses and documents.

In reply, nonsignatory defendants relied on the Employment Agreement provisions that Wheeler owes certain duties to the Employer's "Affiliates" to argue that they are either named parties in the Employment Agreement or third-party beneficiaries. They also reiterated their argument that the arbitration clause was enforceable under agency and/or equitable estoppel theories.

Order

After a hearing, the court denied nonsignatory defendants' motion to compel. The court order stated: "The motion is denied because none of the [defendants] were signatories to the . . . arbitration agreement[] nor does the Court believe they have demonstrated an exception for enforcement by a non-signatory."

DISCUSSION

I. *The FAA*

The parties initially dispute whether the Federal Arbitration Act (FAA) or the California Arbitration Act (CAA) is the controlling law.

We determine the Employment Agreement's arbitration clause is governed by the FAA because it is undisputed Employer engages in interstate commerce. (See *Giuliano v. Inland Empire Personnel, Inc.* (2007) 149 Cal.App.4th 1276, 1286; *Valencia v Smyth* (2010) 185 Cal.App.4th 153, 173-174.) Wheeler contends the FAA is inapplicable because the arbitration provision refers to the CAA. However, at most this reference pertains to procedural rules, and not substantive rules governing the enforceability of a contract arbitration provision. (See *Valencia*, at pp. 173-174.)

In any event, California and federal arbitration law are identical for purposes of our analysis in this appeal. (See *Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 271 (*Boucher*); *Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 714-715 (*Molecular Analytical*).) Under the FAA, state law governs the question whether a nonsignatory party may enforce an arbitration agreement. (*Kramer v. Toyota Motor Corp.* (9th Cir. 2013) 705 F.3d 1122, 1128, 1132, fn. 6; see *Arthur Anderson LLP v. Carlisle* (2009) 556 U.S. 624, 632; *Bitstamp Ltd v. Ripple Labs Inc.* (N.D. Cal. 2015) 2015 U.S. Dist. LEXIS 104049 at pp. *15-16.)

II. *Legal Principles*

Under federal and state law, a strong public policy favors arbitration and seeks to ensure " 'private agreements to arbitrate are enforced according to their terms.' " (*Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.* (2010) 559 U.S. 662, 664; see *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) However, " ' "there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate . . . ." ' " (*Victoria v. Superior Court* (1985) 40 Cal.3d 734, 744; accord, *Cohen v. TNP 2008 Participating Notes Program, LLC* (2019) 31 Cal.App.5th 840, 855 (*Cohen*); *Jones v. Jacobson* (2011) 195 Cal.App.4th 1, 17 (*Jones*).) " '[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he [or she] has not agreed so to submit.' " (*AT&T Techs. v. Communs. Workers of Am.* (1986) 475 U.S. 643, 648; *Cohen*, at pp. 855, 857-858.)

Accordingly, an entity seeking to compel arbitration must generally establish it was a party to an arbitration agreement. (*DMS Services, LLC v. Superior Court* (2012)

205 Cal.App.4th 1346, 1352-1353; *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1236 (*Tuscany*).) But there are exceptions. One exception is the equitable estoppel doctrine under which a nonsignatory can enforce an arbitration clause if the claims against the nonsignatory are dependent on, or inextricably intertwined with, the contractual obligations of the agreement containing the arbitration clause. (See *Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 229-230 (*Goldman*); *Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 306 (*Jensen*); *Jones*, *supra*, 195 Cal.App.4th at p. 20; *Boucher*, *supra*, 127 Cal.App.4th at pp. 271-272; see also *Tuscany*, at pp. 1237-1239.) In determining whether this doctrine applies, a court must focus on the relationship between the claims and the contractual obligations imposed by the arbitration contract. (*Jensen*, at p. 306; *Jones*, *supra*, 195 Cal.App.4th at p. 20; *Boucher*, *supra*, 127 Cal.App.4th at p. 272.) If a substantial portion of the claims are " ' " ' "intimately founded in and intertwined with" ' " ' " the contractual obligations (*Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705, 1713 (*Metalclad*)) and/or "rely on and presume the existence of the [contract]" with an arbitration clause (*Boucher*, *supra*, 127 Cal.App.4th at p. 272), the signatory party may be estopped from denying an obligation to arbitrate with the nonsignatory parties.

The purpose of the equitable estoppel doctrine is to " 'prevent a party from using the terms or obligations of an agreement as the basis for his claims against a nonsignatory, while at the same time refusing to arbitrate with the nonsignatory under another clause of that same agreement.' [Citation.]" (*Tuscany, supra,* 193 Cal.App.4th at

p. 1238; accord, *Goldman*, *supra*, 173 Cal.App.4th at p. 220.) The doctrine precludes "a party from playing fast and loose with its commitment to arbitrate, honoring it when advantageous and circumventing it to gain undue advantage." (*Metalclad*, *supra*, 109 Cal.App.4th at p. 1714; accord, *Jensen*, *supra*, 18 Cal.App.5th at p. 306.)

A party seeking to enforce an arbitration agreement under the equitable estoppel doctrine has the burden to establish the applicability of the doctrine. (*Jones*, *supra*, 195 Cal.App.4th at p. 16.) This burden is somewhat less stringent when a nonsignatory is seeking to compel arbitration against a signatory. (See *Cohen*, *supra*, 31 Cal.App.5th at pp. 862-863; *Benasra v. Marciano* (2001) 92 Cal.App.4th 987, 991 ["[i]t is one thing to permit a nonsignatory to relinquish his right to a jury trial, but quite another to compel him to do so"]; *DK Joint Venture 1 v. Weyand* (5th Cir. 2011) 649 F.3d 310, 316 [" 'it matters whether the party resisting arbitration is a signatory or not' "].)

Whether the doctrine applies is a threshold issue to be resolved by the court, rather than the arbitrator. (See *Am. Builder's Ass'n v. Au-Yang* (1990) 226 Cal.App.3d 170, 179.) In reviewing a trial court's ruling on the equitable estoppel doctrine, we examine the plaintiff's claims alleged in the complaint and any additional facts proffered by the parties in their moving and opposition papers. A de novo review standard applies where, as here, the underlying relevant facts are undisputed. (*Molecular Analytical*, *supra*, 186 Cal.App.4th at p. 708; *Metalclad*, *supra*, 109 Cal.App.4th at p. 1716.)

III. *Analysis*

Each of Wheeler's causes of action (except the slander claim discussed below) center on the nonsignatory defendants' activities relating to the repurchase of Wheeler's

stock in Holding Company and their demand for repayment of the loans. Wheeler contends Holding Company and Howe acted wrongfully because: (1) the repurchase violated agreements and understandings between Howe and Wheeler made during Wheeler's employment that there would be no stock repurchase until a liquidity event occurred and/or until the issuance of a special dividend compensating minority shareholders for Howe's substantial fund withdrawals; (2) Holding Company and Howe had no legal basis, and violated understandings and agreements between Wheeler and Howe, in withholding about $7 million of the stock purchase price and placing an additional $4 million into an "escrow" as repayment for Wheeler's loans; and (3) the stock purchase price was below the stock's fair market value.

Each of these claims relate to, and are founded on, the Employment Agreement. Wheeler would not have acquired Holding Company's stock and claimed a repurchase right at fair market value without the provision in the Employment Agreement entitling him to stock and stock options as part of his employment compensation. Wheeler's employment with Employer thus created the predicate for his claims challenging the stock repurchase price and the propriety and timing of the purchase decision. His entitlement to the stock arose based on a specific provision in the Employment Agreement and he alleged that this entitlement was for the purpose of providing additional compensation to the employees for their services to Employer. Courts have recognized that where stock options are provided as part of an employment relationship, an employee's claim for breach of a separate stock agreement is intertwined with the employment agreement providing for such benefits, and thus subject to the employment

agreement's arbitration clause. (See *Sinclair v. Servicemaster Co.* (E.D. Cal. 2007) 2007 U.S. Dist. LEXIS 84206 at pp. *12-17.)[3]

Additionally, Wheeler's claims against nonsignatory defendants are closely linked to the obligations imposed by the Employment Agreement. The core basis for the causes of action are promises and communications made during the employment relationship. In his superior court complaint against the nonsignatory defendants, Wheeler alleged he was promised certain additional compensation for his services during his employment and nonsignatory defendants acted inconsistent with these promises by repurchasing his stock before he could obtain the benefits of these promises and by demanding repayment on the loans. Wheeler alleged he and Howe frequently discussed that Wheeler's compensation and benefits "did not accurately reflect his substantial contributions to the success of [Employer]," and that the loans and stock options would provide additional earned compensation upon a promised liquidity event. Wheeler further alleged: "The driving force in keeping [him] involved in [Employer] was Howe's promises and agreement to let [him] participate in the ownership of the company so that they would both substantially profit when Howe ultimately decided to sell the company, take it public or some other liquidity event occurred." Wheeler claimed that he and Howe discussed that Employer

---

3 We recognize *Sinclair* is different from here because it involved the issue regarding the arbitration provision's scope, rather than a nonsignatory's right to enforce an arbitration clause. (*Sinclair*, *supra*, 2007 U.S. Dist. LEXIS 84206 at pp. *12-17.) However, the conceptual principle embodied in *Sinclair* reflecting the close relationship between an employment agreement and a stock option or purchase agreement arising from the relationship is highly relevant here.

"would create a stock option plan so that Wheeler could begin sharing in the upside of ownership that Howe had usurped for himself."

The foundation for Wheeler's claims against the nonsignatory defendants is that these promises were made to compensate him for his employment and his successful efforts to create a highly profitable company, and defendants breached these promises in exercising their stock repurchase rights and calling his loans due. As implied (if not expressed) by the complaint's allegations, the consideration for these alleged promises was Wheeler's election to stay with the company and accept lesser compensation with the expectation of a large payout in the future.

Although Wheeler does not cite to a particular provision of the Employment Agreement, his claims necessarily arise from or are part of the Employment Agreement because they fundamentally concern the employment relationship. The Employment Agreement provides that the agreement reflects the final and complete understandings between the employee and Employer pertaining to specified matters, including compensation and other terms and conditions of the employment. Although the stock repurchase decision occurred many months after he was terminated, Wheeler's claim that this repurchase was wrongful stems largely from his employment and related obligations allegedly owed to him in the context of the employment relationship.

This conclusion is bolstered by Wheeler's attaching the Employment Agreement to his superior court complaint (rather than the relevant stock purchase agreement) and the complaint's extensive discussion of the employment relationship as a predicate to explaining and asserting his claims against the nonsignatory defendants. (See

Boucher, supra, 127 Cal.App.4th at pp. 271-272 [equitable estoppel exception applied where "[p]laintiff's claims against defendant rely on, make reference to, and presume the existence of the . . . employment agreement"].) Although Wheeler's complaint states that "[t]his case . . . is not about [his wrongful employment] termination" and "All of the causes of action and damages asserted herein are completely separate and distinct from the employment based causes of action and damages asserted by Wheeler against [Employer]," a party's characterization of his claims is not the controlling factor in deciding whether the equitable estoppel doctrine applies. Because the doctrine seeks to prevent unfairness when a party is relying on an agreement with an arbitration clause, it is the substance, and not the form, of the allegations in the complaint that determines whether the equitable doctrine is triggered under the circumstances. (See *Garcia v. Pexco* (2017) 11 Cal.App.5th 782, 787 [rejecting signatory party's attempt to avoid equitable estoppel doctrine "by framing [the] claims" in a particular way]; *Goldman, supra,* 173 Cal.App.4th at p. 220 [" 'linchpin for equitable estoppel is equity—fairness' "].)

Additionally, the strong nexus among the parties (Employer, its parent Holding Company, and Howe), and their alleged interdependent and concerted misconduct, support the application of equitable estoppel under the circumstances here. (See *Metalclad, supra,* 109 Cal.App.4th at p. 1713.) Without deciding whether Howe and/or Holding Company technically qualify as third party beneficiaries of the Employment Agreement or Employer's agents with respect to their alleged wrongful conduct to trigger these independent exceptions to the general signatory rule requirement (see *Fuentes v.*

TMCSF, Inc. (2018) 26 Cal.App.5th 541, 547), it is undisputed the parties had overlapping and interconnected roles with respect to the alleged wrongdoing. Wheeler alleges in his complaint that Employer was Holding Company's wholly owned subsidiary; Howe was in full control of Employer and Holding Company; Howe treated Employer and Holding Company as his "personal piggy bank[s]"; Howe was the majority shareholder who made all decisions regarding employment and stock repurchase matters; Howe made the decision to remove Wheeler as employee and stockholder for the same or similar reasons; and Howe was the primary actor causing Wheeler's claimed damages. A signatory party cannot preclude arbitration with nonsignatory parties on claims that are closely tied to the arbitration agreement where the parties' relationships are inherently inseparable from one another with respect to the claimed misconduct. (See *Metalclad, supra,* 109 Cal.App.4th at p. 1713 [parent entity defendant could compel arbitration where subsidiary signed arbitration agreement].)

With respect to the slander claim, that claim is based on Howe's alleged statements to Wheeler's former coworkers that Wheeler engaged in misconduct during the employment. The truth or falsity of these statements depends on an analysis of the employment relationship and thus is intertwined with the Employment Agreement, which defines the parties' rights and obligations during the relationship. Accordingly, the equitable estoppel doctrine extends to this cause of action.

Wheeler urges us to find the equitable estoppel doctrine inapplicable in this case because the parties made a deliberate decision not to include an arbitration provision in the stock purchase agreement or in the promissory notes. Although the absence of an

arbitration clause in these agreements is a relevant factor in the analysis, it is insufficient to preclude the application of equitable estoppel under the circumstances here where the facts strongly show the Employment Agreement was the predicate for, and is intertwined with, the asserted claims.

Wheeler also devotes much of his appellate brief to arguments concerning whether the claims alleged in his complaint fall outside the scope of the Employment Agreement's arbitration provision. Although this issue has some overlap with the signatory issue, it is not the same legal question. The scope issue concerns whether the superior court claims come within the parties' agreement that "All disputes, controversies, or claims between Employee and [Employer] arising out of or relating to his employment and/or this agreement . . . shall be resolved by binding arbitration . . . ." As they did below, nonsignatory defendants maintain that the parties delegated this scope issue to the arbitrator under the provision requiring arbitration under AAA or JAMS rules. Wheeler does not dispute this assertion in his appellate briefs. We thus assume that it is correct for purposes of deciding this appeal.[4]

We also find unhelpful Wheeler's focus on the language of the Employment Agreement that mandatory arbitration applies to "all disputes . . . *between Employee and the [Employer]* . . . ." (Italics added.) The equitable estoppel doctrine presupposes that the written arbitration clause applies solely to the contracting parties, but permits a party

---

4 Wheeler discusses this delegation issue only in the context of arguing that the FAA does not apply to the dispute presented here. As noted above, we decide the FAA does apply to the issue before us, but we would reach the same result under the CAA.

outside that relationship to enforce the agreement under the specified circumstances. Thus, the fact that the Employment Agreement requires arbitration between only employee and employer does not bar a third party from enforcing the arbitration agreement where, as here, the equitable estoppel doctrine applies.

Wheeler alternatively urges us to uphold the court's order denying arbitration based on facts showing that the nonsignatory defendants did not comply with the Employment Agreement's preconditions for bringing a claim to arbitration, which require the parties to share information regarding the nature of the claim, the supporting facts, and relevant witnesses. Because Wheeler never provided the nonsignatory defendants with notice that he intended to bring an arbitration claim *against them*, it is questionable whether the nonsignatory parties had any duty to engage in the preliminary responsive steps identified in the Employment Agreement. In any event, the record shows the nonsignatory defendants did substantially comply with these requirements. The parties engaged in extensive pre-arbitration mediation regarding Wheeler's employment and stock repurchase claims and had the full opportunity to obtain information regarding the nature of, and support for, each party's claims and defenses.

DISPOSITION

Order reversed. The court is directed to vacate its order denying defendants' motion to compel arbitration, and to enter a new order staying the litigation and ordering the matter to arbitration. The parties are to bear their own costs on appeal.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P. J.

AARON, J.